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In re Application of
Kirjavainen et al.
Application No. 09/759,938
Filed: January 11, 2001
Title of Invention: DIELECTRIC
CELLULAR ELECTRET FILM AND
PROCEDURE FOR ITS MANUFACTURE

: OFFICE OF PETITIONS
: :
: DECISION GRANTING DECISION
: UNDER 37 CFR 1.78(a)(3)
: :
: :
: :

This is a decision on the Petition to Accept Unintentionally Delayed Claim Under 35 U.S.C. §365(C) for the Benefit of a Prior Filed Application, which is treated as a petition under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. §120 for benefit of the filing date of national stage application No. PCT/FI95/00426, filed August 11, 1995.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(I) of the prior-filed application, unless previously submitted;¹

¹ Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS)), to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date filing date and indicating the relationship of the applications.

- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on January 11, 2001, and was pending at the time of filing of the instant petition. A reference to the prior-filed national stage application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

Also, the instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Further to this, the reference to the prior-filed application was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. See 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon.
Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

This application is being forwarded to Technology Center Art Unit 1771 for consideration by the examiner of applicant's entitlement to the claim of the benefit of priority under 35 U.S.C. § 120 to prior-filed national stage application No. PCT/FI95/00426, filed August 11, 1995, and for consideration of the Amendment, filed February 25, 2003 with a request for a three (3) month extension-of-time, in response to the non-final Office action, mailed on September 11, 2002.

ATTACHMENT: Corrected Filing Receipt

Telephone inquiries concerning this matter should be directed to petitions attorney Derek L. Woods at (703) 305-0014.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions